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Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

In the Matter of )  
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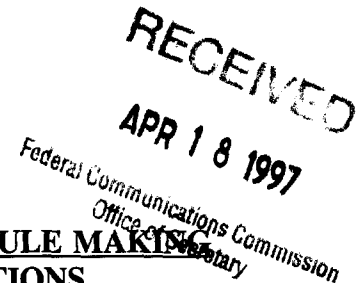
Revision of Part 22 and Part 90 )  
of the Commission's Rules to Facilitate )  
Future Development of Paging Systems )  
)

Implementation of Section 309(j) )  
of the Communications Act -- )  
Competitive Bidding )

To: The Commission

WT Docket No. 96-18

PP Docket No. 93-253



**COMMENTS TO FURTHER NOTICE OF PROPOSED RULE MAKING**  
**BY SMALL BUSINESS IN TELECOMMUNICATIONS**

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## Summary

To avoid the consequences of spectrum warehousing, including the making of such channels unavailable for use by local operators who require additional spectrum to meet market needs, SBT strongly supports construction requirements for nationwide licensees. The Commission's application of construction guidelines must be strict to encourage the delivery of services to the public and the benefits of increased competition.

SBT supports the Commission's efforts to employ partitioning as a means of assuring access to the paging market for small business. To assure that unsavory results do not occur, SBT urges the Commission in strongest of possible terms to limit the use of partitioning to only those instances where the Partitioner assigns all of its right, title and interest in its license for operation on the subject channel within the partitioned area. To assure that the goals set forth by the Commission in the provision of opportunity for small business via partitioning, no licensee created by successful participation in auction should be allowed to partition its license by assigning a portion to any entity which is not a small business during the period prior to the original licensee having completed the making of all payments to the Commission arising out of auction and the completion of all required construction of the system awarded to the original licensee, which is required during the original term of the license.

SBT has attempted to strike a balance among affected parties and the agency in a manner which provides further opportunities for small business in accord with the Congressional mandate

to the Commission appearing at Sections 257 and 309 of the Communications Act of 1934 (as amended). Within these comments, SBT has suggested many procedural and substantive rules which it believes will provide adequate protections and incentives for entities which are successful in a competitive bidding, while concurrently providing opportunities for small business.

The Commission and its legitimate licensees have long suffered from the abuses heaped upon the public by unscrupulous application mills and "investment" houses that prey upon the unsuspecting public. This problem has festered in "boiler rooms" throughout the Country for years with little, if any, true protections being offered by the agency or the industry to curtail such activities. SBT salutes the Commission's efforts in addressing the problem within this proceeding and hopes that the actions taken by the agency here are duplicated in some form for all future applications to employ the radio spectrum.

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Revision of Part 22 and Part 90  
of the Commission's Rules to Facilitate  
Future Development of Paging Systems

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To: The Commission

COMMENTS TO FURTHER NOTICE OF PROPOSED RULE MAKING  
BY SMALL BUSINESS IN TELECOMMUNICATIONS

Small Business in Telecommunications (SBT) is a nationwide, nonprofit association comprised of hundreds of small and local telecommunications operators throughout the United States. Its members include paging companies and operators whose revenues would include most within any definition of small business put forth by either the Commission or the United States Small Business Administration. As one of the original commenters in this proceeding, SBT and its members have demonstrated an intense interest in the proposals contained within this proceeding and the agency's continued effort to make available opportunities for small business in its regulation of the paging industry. Although many SBT members operate on shared frequencies which were regulated under the Commission's private carrier paging rules, SBT members also operate on traditional common carrier frequencies to serve tens of thousands of paging customers. Finally, SBT's members provide many services to paging carriers in the area of resale, therefore, the outcome of this proceeding is of great interest to the vast majority of SBT's members.

SBT seeks for its members continued and expanded opportunities in the delivery of telecommunications services to the public. Its goal is to maintain small business participation as a vital telecommunications market segment, to expand on the business opportunities for small business, to assist newly emerging entrepreneurs in gaining access to the market, to find access to the telecommunications marketplace for women-owned and minority-owned businesses, and to assure that the agency's efforts in employing its auction authority does not preclude equitable participation by smaller concerns which have grave difficulties in competing at auction with publicly traded corporations and their vast resources.

Accordingly, SBT hereby offers its comments to those matters included as a portion of the Commission's Further Notice of Proposed Rule Making ("Further Notice") as such is contained at Section V of the Commission's Second Report and Order and Further Notice of Proposed Rulemaking, WT Docket No. 96-18, PP Docket No. 93-253 (Released February 24, 1997) ("Further Notice"). The proposals and questions put forth in the Commission's Further Notice are of paramount importance to small business to assure its continued, unfettered participation and growth as a portion of the paging industry.

#### Coverage/Construction Requirements For Nationwide Licensees

**Construction Requirements Should Be Adopted:** The Commission has requested comment on the construction requirements for nationwide licensees. To avoid the consequences of spectrum warehousing, including the making of such channels unavailable for use by local

operators who require additional spectrum to meet market needs, SBT strongly supports construction requirements for nationwide licensees. The Commission's records already amply demonstrate that a lack of Commission oversight in this area results in large carriers obtaining authority to operate on large amounts of spectrum, yet failing to make a commitment in construction of the necessary facilities to deliver the promised service to the public, see, In the Matter of MobileMedia. One direct consequence is that those carriers which can afford to hold in inventory such spectrum are allowed to withhold access to spectrum from small businesses. The Commission should take the steps necessary to preclude such anticompetitive activities so that the marketplace will have a full opportunity to gain the competitive advantage of multiple competing carriers in the marketplace, both large and small.

SBT, therefore, suggests that the following construction requirements be imposed on nationwide licensees of paging channels: (1) all existing nationwide licensees, which channels are not subject to auction due to the Commission's decision in this proceeding, should demonstrate within one year of the effective date of the Commission's Order that they have constructed and made operational a sufficient number of base stations within each of the top 30 MTAs to cover at least 75% of the nation's population within the 39 dBu contours from the constructed facilities;<sup>1</sup> (2) all persons obtaining nationwide licenses via the proposed auction procedure would need to demonstrate within two years of the effective date of the Commission's

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<sup>1</sup> The Commission's decision not to auction those channels previously authorized for nationwide use is fully recognized herein. However, the Commission should also recognize the need to assure that those channels are being employed properly by nationwide licensees which have enjoyed ample opportunity to fully construct such systems.

Order that they have constructed and made operational sufficient base stations within each of the top 20 MTAs to cover at least 30% of the nation's population within the 39 dBu contours of the constructed facilities, and within each of the top 30 MTAs covering 70% of the nation's population within the 39 dBu contours of their facilities within five years following the effective date of the Commission's Order, employing those methods set forth under Section 22.537. In the event that a nationwide licensee, which was awarded a license pursuant to competitive bidding can demonstrate that application of the construction guidelines are unreasonable, for reasons related to the existence of an incumbent licensee(s) within the top 30 MTAs, that nationwide licensee might be allowed to substitute construction of ten base stations within an alternative MTA(s) for the purpose of meeting its construction requirements, i.e. substantial coverage.<sup>2</sup> The history of the expansion of paging facilities fully demonstrates that these requirements are wholly reasonable and feasible.

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<sup>2</sup> At present, the Commission's construction requirements often speak only to percentage of population to be served. Sometimes the Commission has employed geographic area of coverage. These individual requirements fall short of insisting that the constructed systems actually provide a viable service to the public. For example, if a nationwide licensee constructs no more than 50 base stations at key geographic locations (one each in downtown New York, Boston, Chicago, Philadelphia, Los Angeles, etc.) that licensee could claim to be "serving" a substantial portion of the nation's population. Yet, logic demonstrates that such a system is only skeletal and not worthy of consideration for substantial construction of a viable paging system. SBT strongly urges the Commission to close this "loophole" in its construction requirements and set a minimum standard for service to each MTA or partitioned area that reflects the realities of system design, while discouraging this obvious method of spectrum warehousing through construction of channel "place-holders". Therefore, some additional geographic requirement beyond that discussed herein, e.g. "serving 50% of the geographic area as determined by the methods prescribed at 47 C.F.R. §22.537", might also be appropriate.

In the past, a paging carrier may have been able to argue that the time periods set forth above might be unreasonable given the time necessary to identify available sites for construction of paging facilities. The advent of comprehensive data bases and directories, most notably *Fryer's Site Guide*,<sup>3</sup> has made this excuse no longer compelling and paging carriers now have access to substantial site acquisition data for quickly performing system design and contacting tower owners for the purpose of constructing facilities. Nor may carriers complain that equipment is not or will not be available for constructing these systems. The number of competing manufacturers of paging transmitters is substantial and can well serve such demand. Nor may carriers complain rationally that the economic burden is too high over a short period of time. Nationwide carriers have fully demonstrated their ability to raise capital for such purposes and the Commission may take official notice of the carriers' demonstrated record in obtaining all necessary financing to make necessary expansions.<sup>4</sup>

To assure that nationwide carriers fully demonstrate their compliance with the construction requirements, SBT urges the Commission to adopt rules which set forth the specific time and manner of nationwide carriers' reports to the Commission on construction, including placement on public notice the event of the filing of all nationwide carriers' construction reports. Such reports should include sufficient information so that the public can review each such report

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<sup>3</sup> *Fryer's Site Guide* was first published in 1992 and is a comprehensive directory of commercially available towers and rooftop sites throughout the United States. Its data base includes contact names for leasing sites and its readily available to all carriers by subscription.

<sup>4</sup> Given the Commission's issuance of a geographic license for the entire Country, carriers would also not suffer any application processing delays that might slow system development. Therefore, the Commission is well positioned to demand rapid build-out of these systems.

for each's accuracy.<sup>5</sup> In the event that any carrier misrepresents its construction, the Commission should remove that carrier's nationwide license, and cancel immediately the carrier's license to operate all facilities which are falsely or inaccurately claimed to be constructed and the Commission should take whatever other sanctions it deems appropriate to discourage such activities by other carriers.

The Commission's application of construction guidelines must be strict to encourage the delivery of services to the public and the benefits of increased competition. Additionally, the Commission's sometimes cursory oversight of construction efforts has resulted in blocks of spectrum lying fallow, while spectrum warehousers withhold licensing opportunities from the marketplace. The most common victims of this practice are small businesses, which cannot afford this method of doing business. Instead, small operators can peruse the Commission's data base and find line after line of licenses and construction permits issued to large carriers, many of which the small businesses know represent unconstructed facilities in their area. Small business should not be made to feel like children pressing their noses against the shop window, while rich adults flaunt their excess and waste on the other side.

**Failure To Construct:** SBT does not believe that the remedy of cancelling in toto a nationwide carrier's authority for failure to meet construction deadlines is necessarily an appropriate remedy. The persons who might be most harmed by such actions are the unwitting

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<sup>5</sup> Recent events before the Commission have fully demonstrated the need for market oversight of a carrier's claims of construction, e.g. In the Matter of MobileMedia, Inc. and In the Matter of Transit Communications, Inc..

investors in such companies, rather than the actual persons responsible for such failure. However, the following remedy is strongly urged. If a defaulting nationwide licensee constructs ten base stations within at least 50% of the MTAs which it is obligated to build out during its two or five-year build out period(s), its failure to complete construction should result in a nationwide licensee (1) forfeiting its nationwide authority; (2) auction of the subject channel on an BTA-by-BTA basis, which auction would be reserved to only small business entities, with annual revenue of less than \$15 million per year; and (3) payment of a forfeiture to be determined by the agency. The nationwide licensee would also be precluded from seeking any expansion of its system following the forfeiture of its nationwide license. Nationwide licensees which fail to complete, at least, the 50% minimum construction would be subject to cancellation of their authority to operate the system in toto.

The use of auctions reserved to only small business participants makes good sense in these instances. The agency has been struggling in its attempts to balance the need to get full value for spectrum, while providing opportunity for small business. In this offered scenario, the agency has presumably already received full value for the spectrum in the original auction. It can, then, afford to be generous in its resale of the spectrum by reserving such auction for the purposes of assuring greater access to the marketplace for small businesses.

Additionally, if one presumes that the non-compliant nationwide licensee has acted in accord with most business planners of large systems, the likelihood is that the carrier began construction in the largest metropolitan areas. As the Commission is fully aware, small business

often constructs and operates paging systems in areas which are ignored or underserved by larger carriers due to the sparseness of population. Therefore, SBT's proposal also comfortably fits the manner of doing business which the marketplace naturally demonstrates.

SBT also recommends that the Commission consider further auctions beyond those discussed above for areas left underserved or unserved by nationwide carriers at the time of license renewal. SBT recommends that if a nationwide licensee has failed to construct a system which meets the following guidelines by the time of license renewal, then the nationwide licensee's authority to serve the unserved or underserved areas should be subject to cancellation followed by auction or application by local operators to serve those areas: (1) the system must include the construction of sufficient base stations in every BTA in the nation and Puerto Rico which serve at least 70% of the previously unserved population within each BTA within the contours of the stations. Auctions or applications for operation within those underserved or unserved areas would be reserved to small businesses which have less than \$15 million in annual revenues and which have constructed at least one licensed telecommunications facility within the unserved or underserved area subject to auction. A nationwide licensee which fails to adequately serve a BTA would be subject to cancellation of its authority to operate in each unserved or underserved area.

Again, the Commission has presumably received full value for the subject channel and has provided more than ample opportunity for the carrier to fully construct a truly nationwide system within its ten-year license term. The carrier's failure should be turned into an

opportunity to serve the interest of small business which will be seeking additional spectrum to serve local markets. To reduce speculation, SBT recommends that such auctions be reserved to small, incumbent operators who have demonstrated an interest in a given locality. Such applications or auctions would be held on a BTA-by-BTA basis and would be subject to one-year construction requirements.

### Partitioning Of Licenses

SBT supports the Commission's efforts to employ partitioning as a means of assuring access to the paging market for small business. The Commission is correct when it states that many small entities will not have the financial resources to participate in auction and bear the cost of system construction over a large area. By allowing partitioning, the Commission creates an opportunity for small businesses which might otherwise be unavailable. However, SBT cautions the Commission that the method of partitioning must assure small operators of regulatory independence following partitioning that is not dependent on the continued control of the original licensee (Partitioner). To create a different method of partition licensing, that does not assure such independence, would relegate small businesses to the status of sharecropper on the auction winner's spectrum plantation. Accordingly, Partitionees should be given all authority within the partitioned area which would have been the Partitioner's, but for the assignment.

To assure that unsavory results do not occur, SBT urges the Commission in strongest of possible terms to limit the use of partitioning to only those instances where the Partitioner assigns all of its right, title and interest in its license for operation on the subject channel within

the partitioned area. The partitioned-area licensee (the Partitionee) should receive authority for operation in the partitioned area in its own name, and not as a sub-licensee to the original licensee. Only in this manner will the Partitionee be assured that its entrance into a partitioning agreement will not be subject to the risk that the original licensee might default in its obligations to the Commission and cause licensing problems for a diligent Partitionee.

**Limitations on Partitioning:** To assure that the goals set forth by the Commission in the provision of opportunity for small business via partitioning, no licensee created by successful participation in auction ("Partitioner") should be allowed to partition its license by assigning a portion to any entity which is not a small business during the period prior to the original licensee having completed the making of all payments to the Commission arising out of auction and the completion of all required construction of the system awarded to the original licensee, which is required during the original term of the license.<sup>6</sup> SBT strongly urges the Commission to limit the eligibility for being a Partitionee to designated entities which have annual revenues of less than \$15 million, see Section 22.223.

To avoid further mischief by Partitionees, SBT further suggests that Partitionees should be precluded from assigning such licenses until following the Partitionee's completion of construction requirements which would include constructing and making operational sufficient

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<sup>6</sup> SBT understands the needs of rural telephone companies and their desire for greater access to the paging channels for a myriad of purposes, including BETRS and rural radio service. Accordingly, SBT supports grant of small business benefits recommended herein to rural telephone companies and has incorporated those recommendations in its suggested rules attached hereto.

base stations per county serving 70% of the previously unserved population within the 39 dBu contours of the system in accord with the methods prescribed at Section 22.537 and the Partitionee's completion of payment to the Commission of any portion of the Partitioner's auction payment assigned to the Partitionee. Such construction by the Partitionee should be completed within one year following grant of the partitioned license, provided however, the Commission should be willing to entertain waiver requests to reasonably extend the construction period for Partitionees with annual revenues of less than \$3 million if good faith efforts to meet construction deadlines have been shown.

SBT supports one notable exception to its recommended limitation on partitioning to only designated entities. There should be no limitation on partitioning when the Partitionee is extending its existing service area, created either by existing facilities or success in participation in competitive bidding, to an adjacent geographic region. SBT recognizes that many large carriers and small carriers have service areas which overlap the designated MTA or EA boundaries for auction and which might be interested in extending coverage via partitioned geographic licensing to other adjacent areas. Logical system design and service to the public would, therefore, be served by allowing partitioning via extension of existing systems, regardless of the nature of the Partitionee in those instances.

A Partitionee's failure to timely construct within a partitioned area should have no effect on the original licensee, provided however, the Partitioner should not be entitled to recover its authority to operate within the area affected by a defaulting Partitionee. SBT is aware of the

Commission's "dual certification" program whereby a Partitioner might certify to the Partitionee's obligation to construct a system. Such certifications, despite their best intentions, place the Partitioner at risk that the Partitionee will not perform and may create improper results regarding the continued licensing of the Partitioner's system. The Commission should, instead, allow and require that a Partitionee accept all consequences of its acceptance of a partial assignment of the Partitioner's license. A Partitioner should not be allowed or required to cure a Partitionee's default in construction, nor should the Partitioner's license be subject to scrutiny for a Partitionee's failure to keep its word to the Commission. Once a Partitioner is allowed to rely on the promises contained within the application for partial assignment, the Commission should look only to the Partitionee for performance.<sup>7</sup>

**Compensation/Unjust Enrichment:** Licensees which choose to partition their licenses and which licensees are not eligible for time payments and bidding credits from the Commission should be limited in receipt of compensation from Partitionees to an amount which is no greater than the amount equal to the total amount of the nationwide licensee, MTA, or EA's winning bid at auction (numerator), divided by the percentage of the auctioned population (nationwide, MTA, or EA) represented by the previously unserved population of the partitioned area ("Partitionee's Percentage"). The Partitioner should still have the sole obligation to pay all

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<sup>7</sup> The Commission may wish to include a warning within its Order which states that any Partitioner who participates in a partial assignment to an entity which the Partitioner knew would default in its obligations to make timely payments to the Commission or knew would fail to timely construct (i.e. a sham assignee) for the purpose of Partitioner's avoiding its obligations, will be subject to punitive action by the Commission, including cancellation of Partitioner's authority.

auction money to the Commission and the Commission should not look to the Partitionee for payment. This limitation on compensation assures that the Commission's auction authority will not become a method for trafficking in licenses, without any reasonable expectation that auction participants would comply with their duty to employ authority to provide service to the public in a rapid and efficient manner. The Commission's Rules should not encourage an entity to participate in auction for the sole purpose of selling parcels of spectrum, without any intent to construct the system for which it was granted a license. In this manner, the Partitionee's payment results in no more than a "pass through" for the Partitioner, without profit.

SBT supports lifting all limitations on the amount to be paid to a licensee for assignment of a license or any portion thereof, whether the licensee is a Partitioner or Partitionee, following the licensee's completion of all construction requirements and the making of any auction payments due the Commission.

When the Partitioner is obligated to the making of time payments to the Commission arising out of its small business status, that licensee should be allowed to assign a partitioned portion of its licensed area to any entity,<sup>8</sup> provided however, that if the Partitionee is not a small business, the Partitionee must pay to the Commission any outstanding amount equal to the

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<sup>8</sup> Although limiting assignment of partitioned areas from large businesses to small assists in meeting the Commission's goals, the contrary does nothing to forward the stated interests of the Commission. Accordingly, SBT recommends an open assignment policy for small businesses, subject to the limitations stated herein. The Commission's stated concerns regarding unjust enrichment, Further Notice at para. 207, are eliminated by the limitation on compensation and the immediate payment of Partitioner Percentage by large carriers to the Commission upon making application for partitioning.

Partitionee's Percentage defined above, plus the value of any bidding credits received by the Partitioner as they apply to the partitioned area, plus interest. Such amounts must be tendered with the original application for partitioning. Future payments by the Partitioner should be adjusted downward by applying the Partitionee's Percentage paid by the assignee, but not the bidding credits or interest, to the principal still owed by the Partitioner to the Commission.

If the Partitioner is obligated to make time payments to the Commission and the Partitionee is also a small business, the Partitionee may also be assigned the duty to make payments directly to the Commission of the Partitionee Percentage, which shall include payment under the same terms as the Partitioner for the relevant percentage amount.<sup>9</sup>

**Rebate:** To further encourage partitioning of systems from large carriers to small, SBT urges the Commission to provide a rebate to Partitioners, which would be equal to the bidding credits the Partitionee would have received had the Partitionee been the original licensee for the partitioned area. The amount to be rebated to the Partitionee would be equal to the amount derived by calculating the Partitionee Percentage and multiplying it by the bidding credit for which the Partitionee would be eligible at the time of partitioning. This amount would only be rebated to Partitioners which are ineligible for bidding credits and only following the Partitionee's completion of construction within the partitioned area.

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<sup>9</sup> SBT supports the Commission's proposal to allow small business to continue to pay installment payments on a pro rata basis following partitioning and include the same treatment to Partitionees who are small businesses. Such a method of collecting payments will encourage consortia of small business to participate in the original auction process.

**Defaults By Partition-Area Licensees:** In the event that any Partitionee defaults on its obligation to make regular and timely payments to the Commission or fails to meet construction requirements such that its license is subject to cancellation, SBT recommends the following result: the defaulting Partitionee shall lose its authority to operate on the subject channel within the partitioned area affected by the default, including the discontinuation of its provision of service from all constructed facilities. Although this result is harsh, the limited construction obligations of a Partitionee make any less stringent result subject to future mischief by Partitionees. SBT also supports reporting requirements on construction of partition-area systems equal to those for licensees who receive authority directly from participation in auction.

**Credit For Partitioned-Area Construction:** The Partitioner should be limited in claiming credit for meeting its construction obligations by relying on the speculative efforts of Partitionees. For example, if the original licensee is near to failing to meet construction deadlines, that licensee should not be allowed to skirt its obligation by eleventh hour applications to partition its license. SBT suggests that the Commission allow original licensees to rely on Partitionees' construction only when such partition-area licenses were granted at least one year prior to the Partitioner's construction deadline. Such rules will further encourage rapid partitioning and force the original licensees to plan ahead in determining their ability to construct their systems in a timely manner.

**Protected Operation in Partitioned Areas:** To avoid future questions regarding compensation and construction, SBT recommends that the Partitioners not be allowed to operate

a base station within any area which is a portion of a partition-area, and that the Partitioner shall not be entitled to protection as an incumbent, existing operator within such areas. Assignment of authority to Partitionees should not result in the Commission's need to regulate additional site-specific facilities operated by the Partitioner. Such a result is contrary to the administrative efficiencies that the Commission is attempting to attain via its use of geographic licensing. It will also discourage Partitioners from "cherry picking" certain populous areas to the detriment of the viability of the partitioned areas as a whole by constructing a few transmitters at key locations.

Within its Further Notice the Commission carefully determined the minimum area for an efficient paging system and concluded that for many carriers, an EA or MTA-wide system was optimal. Although local operators often construct systems which are not this large, there does exist some minimum size which produces a viable paging system. The above limitation relies on the Commission's examination of this phenomenon and encourages rules which would reflect the Commission's findings in its future partitioning rules.

Although the Commission has not yet been convinced in previous proceedings that a minimum geographic size for partitioning is appropriate and has sought to provide to licensees maximum flexibility in system design, SBT suggests that too much flexibility might also defeat the Commission's goal in administering the spectrum. For example, a Partitioner who seeks to assign an area which borders a lake, a national highway, and a series of geographic coordinates, would make licensing extremely difficult for all. And, in the event that the Commission is

confronted with a default in the construction of the system within a partitioned area, a subsequent auction of that area which was tailored only to the business strategies of the partitioning parties, might draw little, if any, interest from bidders. The outcome might easily be that the persons living in that region would be deprived of the competitive benefits of a carrier operating within that geographic area, employing the affected channel. Accordingly, SBT supports a minimum size of each partitioned area to be equal to a county, the lowest common denominator for each of the adopted geographic licenses. Less is too small for efficient administration of the spectrum and more would deprive carriers of flexibility in system design.

**Default On Payments By the Partitionee:** In the event that a Partitionee defaults on its obligation to make payments to the Commission, resulting in cancellation of the Partitionee's license, the Partitioner should be given the choice of either curing the Partitionee's default and accepting return of authority for the partitioned area or allowing the area to be made subject to future Commission auction to designated entities. SBT opposes any obligation on the original licensee to guarantee the Partitionee's payments as a condition to partitioning, however, SBT would support the use of such guarantees to create eligibility in the Partitioner to cure any default by a Partitionee for the purpose of regaining its authority to operate within the partitioned area. Small business is not well positioned to provide mandated guarantees and the default of a Partitionee should not also cause the bankruptcy of the Partitioner which has altered business plans based on its reasonable reliance upon the Partitionee.

**Partitioned Area License Terms:** The term of a Partitionee's license should be co-terminous with that of the original licensee, unless granted within the one year period prior to the original date of expiration of the Partitioner's license. All such licenses should be granted for a term of one year. Renewal of this group of licenses would receive license terms which are co-terminous with the Partitioner's renewed authority. There is no magic in the date of renewal, however, the Commission's grant of a partitioned license must still assure that the Partitionee's construction requirements are met. After that event, the Commission's renewal process should be guided by ease of any administrative burdens.

**Construction/Deconstruction:** The Commission should mandate requirements for construction of base stations which are to be counted toward meeting a licensee's construction requirements. Such requirements are necessary to avoid mischief by licensees who might construct a base station, then deconstruct the facility, yet claim that the facility was constructed and made operational for the purpose of meeting construction requirements. Similarly, a licensee might attempt to employ low-powered stations, or stations which are operated in association with minimally performing antennas or antennas mounted substantially lower than would evidence reasonable construction, or other methods to avoid substantial construction of a radio facility. At the least, the Commission should be willing, upon request by a party commenting to a licensee's notification of construction, to review carefully the manner in which a base station was constructed and made operational, to determine whether the construction of the subject facility was intended to provide viable service to the public. In such proceedings,

the burden of proof of substantial construction should be on the licensee to demonstrate its fidelity to the intent of the Commission's adoption of construction requirements.

### Disaggregation

The Commission has requested comments on the use of disaggregation in the auction of paging channels. Insofar as the Commission's request for comments might be interpreted as a suggestion that paging frequencies might be auctioned in an other than one-at-a-time method vs. auction of blocks of frequencies (excepting those auctions involving frequency pairs), SBT strongly opposes any auction of frequency blocks. Such auctions would necessarily limit small business involvement in auction, increase speculation in the auction process, and would limit a participant's ability to tailor its auction participation to only its specific needs.

However, if the Commission's reference is to the ability of an original licensee to partition spectrum by employing narrow band technologies such as the Commission has mandated for operation of private radio channels or to assign a portion of a license for use of frequency pairs, the following is respectfully offered:

SBT urges the Commission to employ the same guidelines suggested above for construction and build-out of such systems, including limitations on disaggregation to include only small business during the original licensees' construction period, provided however, (i) no use of disaggregation should be allowed to meet the disaggregator's construction requirements as they apply to non-disaggregated spectrum and (ii) payments from the disaggregator to the

original licensee or the Commission should be subject to a further calculation which reflects the percentage of spectrum licensed to the disaggregatee.

### Suggested Rules

The partitioning and disaggregation of paging licenses is a somewhat complex area, involving a balancing of interests among licensees and the Commission. SBT has attempted to strike a balance among affected parties and the agency in a manner which provides further opportunities for small business in accord with the Congressional mandate to the Commission appearing at Sections 257 and 309 of the Communications Act of 1934 (as amended). Within these comments, SBT has suggested many procedural and substantive rules which it believes will provide adequate protections and incentives for entities which are successful in a competitive bidding, while concurrently providing opportunities for small business. To further assist the agency in developing rules which reflect these suggestions, SBT has attached hereto suggested rules for adoption by the Commission. A review of the attachment will reveal a comprehensive effort to deal evenly and fairly with all, while providing all the advantages hoped for by the Commission in its use of competitive bidding procedures for the allocation of licenses over geographic areas.

### Application Fraud

The Commission and its legitimate licensees have long suffered from the abuses heaped upon the public by unscrupulous application mills and "investment" houses that prey upon the unsuspecting public. This problem has festered in "boiler rooms" throughout the Country for

years with little, if any, true protections being offered by the agency or the industry to curtail such activities. SBT salutes the Commission's efforts in addressing the problem within this proceeding and hopes that the actions taken by the agency here are duplicated in some form for all future applications to employ the radio spectrum.

To assist the Commission, the following suggestions are made to make far more difficult the continuation of this horrible activity.

1. The name, address, employer and telephone number of the person or entity preparing the application should appear on the Form 600, including the signature of the preparing party attesting to their actions. A failure to complete this portion of the form should render the application "defective" and not subject to coordination or processing. Such information would be subject to amendment to accommodate relocation. A coordinating entity or Commission employee who is unable to correspond with the preparer due to that person's "disappearance" or inclusion of inaccurate or false information would result in a return of the application.
2. A warning should be included on the SIGNATURE PAGE of all Form 600s, near the location where the applicant executes the form which states:  
  
**THE PERSON SIGNING THIS FORM ACKNOWLEDGES THAT THEY WILL CONSTRUCT AND OPERATE THE PROPOSED RADIO FACILITIES. FAILURE TO CONSTRUCT THE PROPOSED RADIO FACILITIES WITHIN THE REQUIRED CONSTRUCTION PERIOD SHALL RESULT IN CANCELLATION OF ANY LICENSE GRANTED HEREUNDER.**
3. Upon reasonable request by the Commission's antenna survey branch, all applicants should be required to demonstrate reasonable assurance of site availability for all proposed radio facilities. Such assurance may include a letter from the site owner/operator of such availability, a signed lease, a statement that the parties have entered into a lease, or such other document as demonstrates reasonable assurance that the site will be available for construction of the applicant's proposed system, provided however, all such documents must be executed by the site owner/manager. Such demonstration will become a portion